

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TOUCHPOINT SUPPORT SERVICES, LLC
Employer

07-RC-258867

and

MICHIGAN COUNCIL 25, AMERICAN FEDERATION
OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES
(AFSCME), AFL-CIO
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review,¹ and its Emergency Motion to Stay the Election is denied as moot.

¹ In denying review, we conclude that the audio-only pre-election hearing complies with *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 2 (2020), because it did not include witness testimony.

In denying review, we further note that the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail-ballot election would normally be appropriate. We agree with the Regional Director that, under normal circumstances, this would almost certainly not be an election where a mail ballot would be considered. But in *San Diego Gas & Electric*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

In finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework. Mandatory telework in the regional office is based on the Agency's assessment of current Covid-19 pandemic conditions in the local area. Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here. We do not, however, rely on *California Pacific Medical Center*, 357 NLRB 197, 198–199 (2011), and *Masiongale Electrical-Mechanical, Inc.*, 326 NLRB 493, 493 (1998), as those cases did not involve the "extraordinary circumstances" exception to *San Diego Gas & Electric* applicable here.

Furthermore, we note that the Employer's request for review raises issues concerning insufficient Regional compliance with applicable mail-ballot and ballot count procedures. We find that these concerns are best addressed through post-election objections, if warranted. The

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., May 18, 2020.

Employer also raises concerns about potential disenfranchisement of voters if the ballots are delayed in the mail. While such concerns could be relevant to whether a mail-ballot election is appropriate, the circumstances presented here fail to establish that the Regional Director abused her discretion. Any party is free to present evidence of any actual disenfranchisement of voters, if applicable, in post-election objections.

The Board is open to addressing the normal criteria for mail balloting in a future appropriate proceeding.